

## As China forges ahead with its ambitious “Belt and Road Initiative” (BRI), it has also adopted a progressive approach towards dispute resolution.

One of the more prominent developments remains the announcement by the China International Economic and Trade Arbitration Commission (CIETAC) of its new rules governing the arbitration of international investment disputes (Rules) and the CIETAC Investment Dispute Resolution Centre in Beijing (CIETAC IDRC) being established to administer those Rules.

Whilst the primary motivator for the new Rules is to support Chinese companies’ outbound investment in furtherance of China’s BRI, there is also a strong desire to support the independent and impartial resolution of international investment disputes between investors and host countries. To that end, the Rules also provide an alternative for Chinese investors concerned about potential bias in offshore forums due to a lack of understanding of Chinese law and practice. Importantly, the Rules preserve traditional arbitration characteristics such as flexibility, efficiency and economy, whilst incorporating elements of Chinese and international arbitration law and practice.

These recent developments in the dispute resolution space are widely considered a necessary step. Although international investment arbitration is considered the main way to resolve disputes between investors and host states,<sup>1</sup> no Chinese institution offered its own dispute resolution procedure. In fact, with many BRI countries devoid of their own investment dispute resolution forum, the Rules are set to become an effective way of “filling the gap” in the area of Chinese international investment arbitration, whilst also serving to develop and promote the international investment arbitration practice in China through effective and expeditious resolution of BRI-related investor claims.

## Key Characteristics

- **Wide scope of jurisdiction:** the CIETAC Investment Arbitration Rules are designed to regulate both investment treaty arbitrations and investor-state arbitrations, as a contractually agreed dispute resolution mechanism.
- **Primacy:** all investment cases will be heard by the newly established CIETAC IDRC, but can also be referred and administered by CIETAC’s Hong Kong Arbitration Centre if so agreed (by the parties who choose Hong Kong as the seat).

- **Panel:** arbitrators are to be appointed from a panel that is to be maintained by CIETAC, with deviations from the status quo requiring the approval of CIETAC’s chairman. CIETAC will also have scope to scrutinise draft awards and to draw the attention of the tribunal to “certain points” as long as that does not affect the tribunal’s independence.
- **Third-party funding:** parties may receive third-party funding, although it must be disclosed upfront to the counterparty, arbitrators and CIETAC.

## Adoption of CIETAC and Its Rules

Although states are unlikely to renegotiate their bilateral investment treaties (BITs) with China to include CIETAC investment arbitration as a dispute resolution mechanism, there is potential for parties to select CIETAC investment arbitration in future contracts between investors and foreign states, governmental organisations or entities whose conduct is attributable to a state.

Further, whether the hosting state agrees to name CIETAC in a specific investment agreement (when not a designated or contemplated dispute resolution institution in BITs between states) will depend largely on the negotiating power of the investor, including the Chinese banks or financial institutions providing the funding for the project.

We note that there have been few China-related investor-state arbitrations. This is because, historically, these types of disputes have been resolved diplomatically or by direct settlement between the parties. That being so, how the Rules will be adopted in practice remains to be seen. Notwithstanding, given the unprecedented growth in outbound Chinese investment via the BRI, as well as increased Chinese investor awareness of investment treaty rights, we expect that this will likely soon change. We will continue to follow the practical application of the Rules to BRI projects with interest.

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<sup>1</sup> “Interview with Wang Chengjie Regarding Investment Arbitration Rules”, 22 September 2017.